Supreme Court, U.S.
FILED
JUN 9 1993
OFFICE OF THE CLERK

No. 92-1962

In the Supreme Court of the United States

October Term, 1993

LEON BLAIS AND FRANK MENDIBLES,

Petitioner,

vs.

THOMAS BROUSSARD, PAIGE R. PARRISH and MOLLIE B. BROUSSARD,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

JOHN A. DALY
CHASE, ROTCHFORD, DRUKKER & BOGUST
A Law Corporation
700 South Flower Street, Suite 500
Los Angeles, CA 90017
(213) 626-8711

Attorney for Defendant/Appellant
FRANK MENDIBLES

GLEN E. TUCKER
IVES, KIRWAN & DIBBLE
520 South Grand Avenue, 4th Floor
Los Angeles, California 90017
Telephone: (213) 627-0113

Attorneys for Defendant/Appellant
LEON BLAIS

Westside Law Publishers • West Hollywood, CA 90069 • (310) 273-2887

QUESTION PRESENTED FOR REVIEW

Whether the failure of Defendant/Appellant to file a timely Notice of Appeal from the District Court's Order Denying Defendant's/Appellant's Motion for New Trial, under the circumstances herein was "excusable neglect" under *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, et al.*, (___ U.S. ___ No. 91-1695) decided March 24, 1993).

Whether a lack of Notice of Entry of the District Court's Order Denying Defendant's/Appellant's Motion for New Trial under FRAP 4(a)(6) entitles Defendant/Appellant to an extension of time in which to file a Notice of Appeal from said Order.

PARTIES

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Clerk of the Court of Appeals, whose judgment herein sought to be reviewed, is unreported and unpublished. The Appeal of Defendant/Appellant was dismissed on April 12, 1993 for lack of jurisdiction. Further, the Court of Appeals denied Defendant/Appellant's petition for rehearing of the Court's April 12, 1993 Order dismissing the appeal, and rejected the suggested rehearing en banc.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeal was extended on April 12, 1993. The jurisdiction of this court is involved pursuant to 28 USC § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED.

Federal Rule of Appellate Procedure

Rule 4
Rule 4(5)
Rule 4(a)(5)
Rule 4(a)(6)
Rule 6(b)
Rule 28

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No. _____

In the Supreme Court of the United States

October Term, 1993

LEON BLAIS AND FRANK MENDIBLES,

Petitioner,

vs.

THOMAS BROUSSARD, PAIGE R. PARRISH and MOLLIE B. BROUSSARD,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

STATEMENT OF THE CASE

This action arose under 42 U.S.C. 1983 involving a search of plaintiffs' house and law office, pursuant to a search warrant issued by Los Angeles Superior Court. Jury found for the plaintiffs and against defendants jointly and severally in the amount of $200,000.00. Judgment entered for plaintiff appellee and against appellant on November 13, 1992. Thereafter, Defendant/Appellant moved for a New Trial on November 19, 1992.

On December 15, 1992, the court denied the motion of defendants for new trial, two days after the period within

which a notice of appeal from entry of judgment could have been filed.

After receipt of the Order of Denial of the Motion for New Trial. Defense counsel conferred, and agreed to file a joint brief on appeal under FRAP Rule 28. Counsel discussed the date within which the filing of the Notice of Appeal had to be accomplished and determined that the date of "entry" of Denial of the Motion for New Trial was December 16, 1992, based upon a stamp at the top left-hand corner of the page of the Court Order Denying Motion for New Trial.

On January 5, 1993, defense counsel signed the Notice of Appeal. That the said Notice of Appeal referred to the Order Denying the Motion for New Trial citing the date entered as December 16, 1992. Through mistake, inadvertence, appellants did not file their Joint Notice of Appeal until January 15, 1993, although the document was signed on January 5, 1993.

The joint notice of appeal was filed on the 31st day after entry of the order denying the motions for new trial. Rule 4(a)(1) of the Federal Rules of Appellate Procedure provides that a Notice of Appeal must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed form. When a new trial motion is filed, the time for appeal of all parties is 30 days "from the entry of the order denying a new trial . . . ." F.R.A.P., Rule 4(a)(4)(iv).

On March 17, 1993, the Ninth Circuit Court of Appeal ordered appellants to show cause why their late appeal should not be dismissed in that "the notice of appeal does not appear to have been filed within 30 days of the

district court's order denying a new trial. *See* Fed.R.App.P. 4(a)(4)."

On April 12, 1993, the Ninth Circuit Court ordered the appeal dismissed and thereafter refused rehearing.

To date counsel for appellants have received no document Order of Denial of Motion for New Trial as being entered on December 15, 1992.

That on January 23, 1993, counsel co-signed the United States Court of Appeal for the Ninth Circuit Court of Appeals Docket Statement to perfect the appeal under the erroneous belief although the Notice of Appeal was not filed on January 5, 1993, the Notice of Appeal was timely filed since the Order Denying the New Trial was not entered until December 16, 1993.

As of the January 23, 1993 signing of Appeals Docket Statements, there was no notice from the plaintiffs/appellees or the court that the Notice of Appeal was untimely or that the date of entry of the Order Denying Motion for New Trial was incorrect.

That on January 25, 1993, a copy of the United States Court of Appeals for the Ninth Circuit Civil Appeals Docketing Statement was filed and received by Cathy A. Catterson, Clerk of the U.S. Court of Appeals, Pasadena Office.

On January 29, 1993, counsel received a copy of an Order dated January 28, 1992 wherein the District Court reviewed a Notice for a Stay Without Posting a Supersedeas Bond and determined that it was appropriate for submission without oral argument and did indicate that the Motion would be denied because the Motion for New Trial was

untimely or that the date of entry of the Order Denying the Motion for New Trial was incorrect.

On February 22, 1993, the District Court expressed in its Order Denying a Motion to Stay Without Posting a Supersedeas Bond, that the defendants had filed what appears to be timely Notice of Appeal.

REASON FOR GRANTING THE WRIT

1. CERTIORARI SHOULD BE GRANTED TO UNIFY THE INTERPRETATION OF "EXCUSABLE NEGLECT" AMONG THE LOWER COURTS.

The judgment of the United States Court of Appeals for the Ninth Circuit should be reviewed by this Court because the Order dismissing the appeal ignores the Congressional intent that courts be permitted to accept late filing caused by inadvertence or mistake and not just those caused by intervening circumstances beyond the party's control. This flexible understanding comports with the ordinary meaning of "neglect." District courts have been divided in their interpretation of "excusable neglect" as found in Rule 4(a)(5) of the Federal Rules of Appellate Procedure. The instant case provides the Court with an opportunity to clarify the interpretation of "excusable neglect" under the Federal Rule of Appellate Procedures as it did in the case of *Pioneer*, *supra*, etc. under the Bankruptcy Rules.

2. THE COURT SHOULD CLARIFY THE PROCEDURAL NECESSITY FOR NOTICING ENTRY OF ORDERS.

CONCLUSION

WHEREFORE, petitioners respectfully pray that a writ of certiorari be granted.

DATED: June 7, 1993

Respectfully Submitted,

By: JOHN A. DALY
CHASE, ROTCHFORD, DRUKKER & BOGUST

Attorneys for Defendant
Frank Mendibles

By: GLEN E. TUCKER
IVES, KIRWAN & DIBBLE

Attorney for Defendant
Leon Blais

APPENDIX

APPENDIX

A. JUDGMENT OF COURT OF APPEALS.

The January 15, 1993 notice of appeal was not filed within 30 days of entry of the district court's December 15, 1992 order denying a new trial. In addition, the district court lacked jurisdiction to entertain appellants' motion for permission to file a nunc pro tunc motion for an extension of time to file the notice of appeal, filed after this court's March 17, 1993 order to show cause, or to treat appellants' late notice of appeal as a motion for extension of time and grant an extension. Accordingly, the appeal is dismissed for lack of jurisdiction.

Appellants' petition for rehearing of this court's April 12, 1993 order dismissing the appeal for lack of jurisdiction is denied. The suggestion for rehearing en banc is rejected.

B. ORDERS BELOW.

RECEIVED
APR 15 1993

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
APR 12 1993

THOMAS R. BROUSSARD, et al., Plaintiffs-Appellees, vs. LEON BLAIS, et al., Defendants-Appellants.	No. 93-55165 DC# CV-87-01182-AWT Central California (Los Angeles) ORDER

Before: BROWNING, KOZINSKI and RYMER, Circuit Judges

The January 15, 1993 notice of appeal was not filed within 30 days of entry of the district court's December 15, 1992 order denying a new trial. In addition, the district court lacked jurisdiction to entertain appellants' motion for permission to file a nunc pro tunc motion for an extension of time to file the notice of appeal, filed after this court's March 17, 1993 order to show cause, or to treat appellants' late notice of appeal as a motion for extension of time and grant an extension. See Fed. R. App. P. 4; Alaska Limestone Corp. v. Hodel, 799 F.2d 1409 (9th Cir. 1986). Accordingly, the appeal is dismissed for lack of jurisdiction. See Fed. R. App. P. 4(a)(4); Alexander v. Sacha, 439 F.2d 742 (9th Cir. 1971).

FILED
APR 29 1993
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THOMAS R. BROUSSARD, et al., Plaintiffs-Appellees, vs. LEON BLAIS, et al., Defendants-Appellants.	No. 93-55165 DC# CV-87-01182-AWT Central California (Los Angeles) ORDER

Before: BROWNING, KOZINSKI and RYMER, Circuit Judges

Appellants' petition for rehearing of this court's April 12, 1993 order dismissing the appeal for lack of jurisdiction is denied. The suggestion for rehearing en banc is rejected.

C. STATUTES AND RULES.

28 U.S.C. § 1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Federal Rule of Appellate Procedure:

> 4(a)(b)(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the

judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

4(a)(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

4(a)(6) The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed

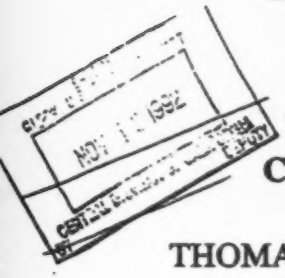
within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

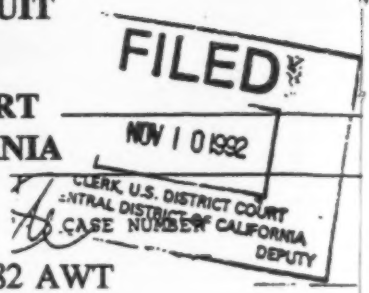
6(a) Allowance of an appeal under section 24 of the Bankruptcy Act (11 USC § 47) from orders, decrees, or judgments of a district court involving less than $500, or from an order making or refusing to make allowances of compensation or reimbursement under sections 250 or 498 thereof (11 USC § 650, § 898) shall be sought by filing a petition for allowance with the clerk of the court of appeals within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed.

7 The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

(Amended Apr. 30, 1979, effective Aug. 1, 1979)

D. MATERIALS FROM DISTRICT COURT AND NINTH CIRCUIT COURT OF APPEALS.





UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THOMAS R. BROUSSARD, et al.,
Plaintiffs

vs.

LEON BLAIS, et al.,
Defendants

CV 87-1182 AWT

JUDGMENT OF THE VERDICT (For Plaintiff

This cause having been tried by the Court and a Jury, before the Honorable A. WALLACE TASHIMA, Judge presiding, and the issues having been duly tried and the Jury having duly rendered it's verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff(s)

THOMAS R. BROUSSARD, MOLLIE B. BROUSSARD and PAIGE R. PARRISH

have and recover of and from the defendant(s) LEON BLAIS and FRANK MANDIBLES the sum of One Hundred Ninety-Four Thousand, Six Hundred Dollars ($194,600.) for Thomas R. Broussard, the sum of Five Thousand Dollars ($5000.) for Mollie B. Broussard and the sum of Four Hundred Dollars ($400.) for Paige R. Parrish XXXXXXXX _____, together with costs, taxed in the sum of _____.

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)

Clerk, U.S. District Court

Dated: 11/10/92

By _____
Deputy Clerk
Shelley Keir

CV 49 (3/87) JUDGMENT OF THE VERDICT
(FOR PLAINTIFF)

RECEIVED DEC 18 199

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY ... 12/16/92 ... DEPUTY CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
DEC 15 1992

THOMAS R. BROUSSARD, et al.,
Plaintiffs

vs.

LEON BLAIS, et al.,
Defendants

CV 87-1182 AWT

ORDER ON MOTIONS FOR NEW TRIAL

After a jury verdict in favor of plaintiffs, both defendants have moved for a new trial. For the reasons stated briefly below, the motions will be denied.

The motions are based primarily on defendants' contention as to the sufficiency of evidence. Without reciting the evidence in support of the verdict in detail, the court finds that the evidence was amply sufficient to sustain the verdict, defendants' selective recitation of the evidence notwithstanding.

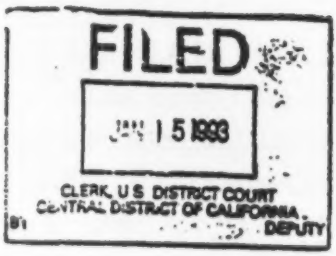
With respect to the asserted errors of law which defendants contend were committed by the court, this is nothing more than a reargument of the points made at trial. The court abides by its rulings made at trial. Moreover, as the court stated more than once during trial, many of the points of law now being again contested by defendants are issues already decided by the Ninth Circuit on defendants' interlocutory appeal. As such, those rulings are law of the case and the trial court is not free to ignore them or depart therefrom.

IT IS ORDERED that the motions for new trial by defendants Blais and Mendibles are DENIED.

Dated: DEC 15 1992

A. WALLACE TASHIMA
United States District Judge

RICHARD B. WOOLLEY
Assistant Attorney General
Rhode Island Department of
Attorney General
72 Pine Street
Providence, Rhode Island 92903
(401) 274-4400



GLEN E. TUCKER
IVES, KIRWAN & DIBBLE
520 South Grand Avenue, 4th Floor
Los Angeles, California 90071
(213) 627-0113
Attorneys for defendant,
LEON BLAIS

JOHN A. DALY
CHASE, ROTCHFORD, DRUKKER & BOGUST
700 South Flower Street, Fifth Floor
Los Angeles, California 90017
(213) 236-9635
Attorneys for defendant, FRANK MENDIBLES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THOMAS R. BROUSSARD, et al., Plaintiffs	CV 87-1182 AWT (Kx)
vs.	
LEON BLAIS, et al., Defendants	NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that defendants, LEON BLAIS and FRANK MENDIBLES, hereby appeal to the United States Court of Appeals for the Ninth Circuit from Judgment on Verdict entered in this action on the November 13, 1992 and the order denying defendants' Motions for New Trial entered in this action on December 16, 1992.

DATED: January 5, 1993

IVES, KIRWAN & DIBBLE

BY _____
GLEN E. TUCKER
Attorneys for Defendant,
LEON BLAIS

CHASE, ROTCHFORD, DRUKKER & BOGUST

BY _____
JOHN A. DALY
Attorneys for Defendant,
FRANK MENDIBLES

PROOF OF SERVICE BY MAIL
(§1013a, §2015.5 C.C.P.)

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within-entitled action; my business address is 520 South Grand Avenue, 4th Floor, Los Angeles, California 90071.

On January 15, 1993, I served the within NOTICE OF APPEAL on counsel for the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope thereon, fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

BERNARD W. TALMAS
3435 Wilshire Boulevard
Suite 2925
Los Angeles, California 90010

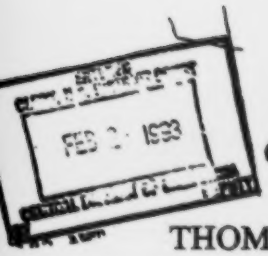
JOHN A. DALY
Chase, Rotchford, Drukker & Bogust
700 South Flower Street
Fifth Floor
Los Angeles, California 90017

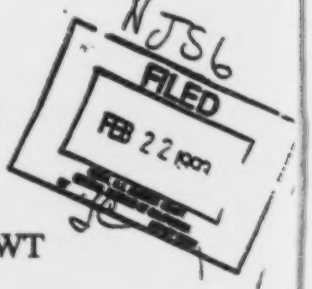
I declare under penalty of perjury that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed this 15th day of January, 1993 at Los Angeles, California.

LAURIE O'BRIAN

RECEIVED FEB 25 1993

A12





UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THOMAS R. BROUSSARD, et al.,
Plaintiffs

CV 87-1182 AWT

vs.

LEON BLAIS, et al.,
Defendants

ORDER RE STAY ON APPEAL

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP RULE 77(d)

After judgment in favor of plaintiffs and the denial of defendants' motions for a new trial, defendants have filed what appears to be a timely notice of appeal. Defendants have also moved to stay execution of the judgment without posting a "superceding" (sic.) bond. Plaintiffs oppose.

The motions are based on the solvency and financial worth of the public entity employers of the individual defendants. The total judgment, for which both defendants are jointly and severally liable, is $200,000.[1] For the reasons stated briefly below, the motions are denied.

Neither the State of Rhode Island nor the County of Los Angeles is the judgment debtor. Further, although counsel opines, in effect, that the limitation is disregarded in practice, Rhode Island law limits state employee tort indemnification to $50,000. The court also takes judicial notice of the extremely precarious financial condition of the County of Los Angeles. Given these factors, although the probability remains high that the judgments would be

[1] On the same date that these motions to stay were made, Jan. 25, 1993, the court awarded to plaintiffs attorneys' fees of $257,245. Neither side have noticed an appeal from this order, which was entered on Jan. 28.

collectible, the uncertainties greatly complicate the collection process and are likely to draw it out over time. Plaintiffs ought not be subjected to a long, complicated and drawn out collection process after being successful on appeal. The costs to the public entities, should they choose to post security on behalf of their employees, is minimal.[2]

IT IS ORDERED:

1. The motions to stay without posting a superceding (sic.) bond are DENIED.

2. Execution of the Judgment entered November 13, 1992 is stayed, provided that, within 10 days hereof, defendants give a supersedeas bond, as provided in F. R. Civ. P. 62(d), in the sum of $236,000.00.[3]

3. In the event a timely notice of appeal from the Order on Motion For Attorneys' Fees, entered January 28, 1993, is filed by defendants, the amount of the supersedeas bond shall be increased by $300,000.00,[4] for a total supersedeas bond of $536,000.00. In the event such a notice is filed, the time within which defendants shall give a supersedeas bond shall be extended to the tenth day after the filing of such notice of appeal.

---

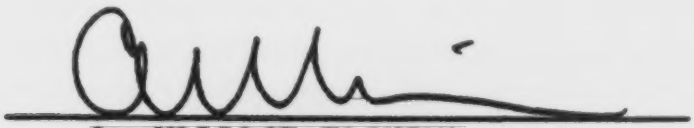
[2] If they wish to avoid premium payments, they can post cash bonds which, if defendants are ultimately successful, would be returned to them, together with any interest earned thereon.

[3] This figure is obtained by adding to the amount of the judgment, $25,000 for attorneys' fees on appeal, $5,000 for costs and approximately two years of post-judgment interest.

[4] This figure is obtained by adding to the amount of attorneys' fees, $20,000 for attorneys' fees on appeal, $2,000 for costs and approximately two years of post-judgment interest.

4. In the event defendants cannot agree between themselves as to how to apportion the costs or other incidents of the supersedeas bond, the stay of execution shall become effective for each individual defendant on his posting, or there being posted on his behalf, a supersedeas bond in the sum of $118,000.00 or $268,000.00, as the case may be.

Dated: FEB 20 1993



A. WALLACE TASHIMA
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

RECEIVED
CATHY A. CATTERSON, CLE
U.S. COURT OF APPEALS
PASADENA OFFICE
JAN 2[illegible] 1993

PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL:

Thomas R. Broussard, et. al v. Arlene Violet et. al.

DISTRICT: Central **JUDGE:** Tashima.

DATE COMPLAINT FILED: 1987. **DISTRICT COURT DOCKET NUMBER:** CV 87-01182 AWT

DATE NOTICE OF APPEAL FILED: Jan. 15, 1993 **IS THIS A CROSS-APPEAL?** ___ **YES** x **NO**

HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? x **YES** ___ **NO. IF YES, STATE WHEN:** February 12, 1991

CASE NAME: Broussard V. Violet

CITATION: Broussard v. Blais **DOCKET NUMBER:** USCA 89-56207

CHECK AS MANY AS APPLY

JURISDICTION

1. FEDERAL

(X) Federal Question

( ) Diversity

( ) Other (Specify)

2. APPELLATE

(X) Dual Decision of District Court

( ) Interlocutory Decision Appealable As of Right

( ) Interlocutory Order Certified by District Judge (Specify)

1. STAGE OF PROCEEDINGS

( ) Pre-Trial

( ) During Trial
(X) After Trial

2. TYPE OF JUDGMENT/ORDER APPEALED

( ) Default Judgment
( ) Judgment/Court Decision
( ) Dismissal/Jurisdiction
(X) Judgment/Jury Verdict
( ) Dismissal/
( ) Summary Judgment
( ) Judgment NOV
( ) Declaratory Judgment
( ) Directed Verdict
( ) Other (Specify)

3. RELIEF

( ) Damages:
Amount Sought: $ _____
Amount Granted:
( ) DENIED $ 200.00
( ) Injunctions
( ) Preliminary or ( ) Rename
( ) Granted or ( ) Denied

Brief Description of Nature of Action and Result Below:

Action arose under 42 U.S.C. 1983 involving a search of plaintiffs' house and law office, pursuant to a search warrant issued by Los Angeles Superior Court. Jury found for the plaintiffs and against defendants jointly and severally in the amount of $200,000.00.

ISSUES PROPOSED TO BE RAISED ON APPEAL:

See attached.

UNITED STATES DISTRICT COURT

FOR THE Central DISTRICT OF California

Transcript Designation and Ordering Form

U.S. Court of Appeals Case No. 93-55165 U.S. District Court Case No. CV-87-01182 AWT

Short Case Title Broussard v. Violet

Date Notice of Appeal Filed by Clerk of District Court January 15, 1993

SECTION A - To be completed by party ordering transcript.

HEARING DATE COURT REPORTER

LUANNA WAMACK, COURT REPORTER

November 5, 1992

November 5, 1992

October 20, 1992

Oct. 20, 1992; October 21, 1992

Oct. 22, 1992; Oct. 27, 1992; Oct. 28, 1992; Oct. 29, 1992; Nov. 2, 1992; Nov. 3, 1992; Nov. 4, 1992; Nov. 5, 1992

PROCEEDINGS (strike portion not desired)

Voir Dire

Opening State memo

Settlement Instructions

Closing Arguments

Jury Instructions

Pre-Trial Proceedings

Other (please specify) Testimony

(attach additional page for designations if necessary)

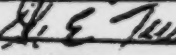
( ) I do not intend to designate any portion of the transcript and will notify all counsel of this intention.

(X) As retained counsel (or litigant proceeding in pro per), I request a copy of the transcript and guarantee payment to the reporter of the cost thereof upon demand. I further agree to pay for work done prior to cancellation of this order.

( ) As appointed counsel I certify that an appropriate order authorizing preparation of the transcript at the expense of the United States has been, or within 5 days hereof will be, obtained and delivered to the reporter. I agree to recommend payment for work done prior to cancellation of this order.

Date transcript ordered January 26, 1993

Type or Print Name John A. Daly Glen E. Tucker

Signature of Attorney  , Phone Number (213) 627-0113 (213) 625-8711

Address: 700 South Flower 520 South Grand

Fifth Floor Fourth Floor

Los Angeles, CA 90017 Los Angeles, CA 90071

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 700 S. Flower Street, 5th Floor, Los Angeles, CA 90017. On this date, I served the attached document described as **TRANSCRIPT DESIGNATION AND ORDERING FORM** on the attorneys of record in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Bernard Talmas, Esq.
3435 Wilshire Boulevard, 30th Fl.
Los Angeles, CA 90010

Russell Iungerich, Esq.
3580 Wilshire Boulevard, Ste. 1920
Los Angeles, CA 90010-2520

Richard B. Woolley, Esq.
Assistant Attorney General
Rhode Island Department of Attorney General
72 Pine Street
Providence, Rhode Island 92903

X BY MAIL:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is

presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

FEDERAL

I declare that I am employed in the office of a member of the bar of this court at whose direction the service made.

Executed on February 18, 1993, at Los Angeles, California.

Gloria Castillo

GLORIA CASTILLO

RECEIVED MAR 19 1993

A21

FILED
MAR 17 1993
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THOMAS R. BROUSSARD, et al., Plaintiffs-Appellees,	No. 93-55165
	DC# CV-87-01182-AWT
vs.	Central California (Los Angeles)
LEON BLAIS, et al., Defendants-Appellants.	ORDER

The notice of appeal does not appear to have been filed within 30 days of the district court's order denying a new trial. See Fed. R. App. P. 4(a)(4). Accordingly, this court may lack jurisdiction to consider the appeal. See Alexander v. Sacha, 439 F.2d 742 (9th Cir. 1971). Within 14 days of the date of this order, appellants shall move for voluntary dismissal of the appeal or show cause why the appeal should not be dismissed as untimely. If appellants elect to show cause, appellees may respond within 10 days after service of appellants' response.

If appellants fail to comply with this order, the appeal will be dismissed automatically by the Clerk pursuant to Ninth Cir. R. 42-1.

For the Court:

Mary E Hurley

Mary E. Hurley
Motions Attorney/Deputy Clerk
Local Rule 27-7

M.Orders 3/15/93

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 9105 Sunset Boulevard, West Hollywood, California 90069; that on June 8, 1993, I served the within *Petition For Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: Original and 40 Copies)

Clerk, U.S. Court of Appeals
Ninth Judicial Circuit
121 Spear Street
San Francisco, CA 94119

Bernard W. Talmas, Esq.
Attorney at Law
3435 Wilshire Boulevard
Suite 2925, Equitable Plaza
Los Angeles, CA 90010

Russell Iungerich, Esq.
3580 Wilshire Boulevard
Suite 1920
Los Angeles, CA 90010-2520

Judge A. Wallace Tashima
United States Federal Court
Central District
312 North Spring Street
Los Angeles, CA 90012

Glen E. Tucker, Esq.
Ives, Kirwan & Dibble
520 South Grand Avenue
4th Floor
Los Angeles, CA 90071

Richard B. Woolley
Assistant Attorney General
Rhode Island Department of Attorney General
72 Pine Street
Providence, Rhode Island 92903

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 8, 1993, at Los Angeles, California.

Betty J. Malloy
(Original Signed)